No. _____

In the Supreme Court of the United States

IQBAL A. PASHA
Petitioner,

v.

WILLIAM M. MERCER INVESTMENT CONSULTING, INC.
AND
MERCER CONSULTING GROUP, INC.
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

For the reasons stated below, the summary order of the appellate court, and the denial of the petition for rehearing, is a fraud committed by the Chief Judge of the Court of Appeals of the Second Circuit in order to favor a giant law firm, with its multi-billion dollar corporate client.

The appellate court's decision was not based on the merits of this case and should be summarily reversed, with the case remanded to the district court for trial by jury.

Question: Whether this deliberate manipulation of the judicial process is allowed to go unchallenged by the U.S. Supreme Court, given its supervisory responsibilities, and the public's reliance on the complete integrity of the judicial system.

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LIST OF PARTIES

1. IQBAL A. PASHA
   Petitioner
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2. WILLIAM M. MERCER INVESTMENT CONSULTING, INC., AND MERCER CONSULTING GROUP, INC.
   Respondents
   200 Park Avenue, New York, NY 10166-4193.

TABLE OF AUTHORITIES

Cases

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OPINIONS BELOW

The Summary Order of the Court of Appeals (App., *infra*, 25-28) is unreported. The denial of the Petition for Rehearing (App., *infra*, 29-30) is unreported. The Judgment of the District Court (App., *infra*, 24) was reported. The two opinions of the District Court are available at the website for the U.S. District Court of the Southern District of New York, *www.nysd.uscourts.gov.*

JURISDICTION

District court granted summary judgment to respondents on March 11, 2004. The judgment of the Court of Appeals for the Second Circuit affirming decision was entered on June 22, 2005. On July 6, 2005, Petitioner timely filed a Petition for Rehearing. The court entered a summary order (App., *infra*, 29-30) denying the petition on August 15, 2005.

This petition is filed within 90 days of that date, so that this Court has jurisdiction to review the judgment of the Second Circuit on petition for certiorari rests by virtue of Section 1254(1) of the Judicial Code (28 U.S.C. § 1254 (1)).

STATUTES INVOLVED

The relevant statutory provisions are the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq., and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.

STATEMENT

For the reasons stated below, the summary order of the appellate court, and the subsequent denial of the petition for rehearing, is a fraud committed by the Chief Judge of the Court of Appeals of the Second Circuit in order to favor a giant law firm, with its multi-billion dollar corporate client.

The appellate court's decision was not based on the merits of this case and should be summarily reversed, with the case remanded to the district court for trial by jury.

I am a dual professional person (Actuary & CFA) and do not make this charge against a Judge lightly. Nor do I enjoy the process of doing so. I have done so because it is a serious matter when a Chief Judge uses his position to destroy a pro se plaintiff's case in order to support his friends at a law firm.

The reason why I am pro se is because the cost of litigation over six years and, may be, more against a major conglomerate would have been exorbitant. Also, independent lawyers are reluctant to accept a case on a contingent-fee basis over an extended period of time. During the last six years I have consulted at least four different lawyers on various aspects of this case and have benefited below from their advice.

I had applied to the Mercer Consulting Group for a job in 1996. (Mercer is the largest firm of actuaries and investment consultants in the country.) At that time they did not have an appropriate vacancy. I applied again in late 1999 for the job of Senior Investment Consultant and, after several interviews, was told by the Head of Investment Consulting that I would be made a Principal of the firm. A few days later, on calculating my age from the year 1968, in which I qualified as an Actuary, they withdrew the offer. (All this was reported to the EEOC, or is contained in my briefs, and was

never denied by the respondents over six years. In fact, they have twice admitted in writing that I was qualified for the job app[illegible] for).

The head of investment consulting was also of Pakistani origin, like me. Neither he, nor Mercer, Inc., ever provided a clear reason why I was not hired.

Some six months later, on learning that Mercer, Inc, had recruited many less-qualified or less-experienced investment consultants, I filed suit in the Southern District of New York.

While this is a case of refusal to hire, may I remind the reader that the *McDonnell Douglas Corp v. Green* 411 U.S. 792 S. Ct. (1973) case, decided by the U. S. Supreme Court in 1973, and which set the original standard for age discrimination cases, was a case of failure to rehire an individual. In law, and in discrimination cases, there is no difference between an ex-employee and a candidate. Or, for that matter, between class action suits or individual action. Each has to be proven on its merits.

It is often said that age discrimination and civil rights cases are difficult to prove in court. I have clearly stated in section V of my Petition for Rehearing dated July 6, 2005 (App., *infra*, 55) that there is enough evidence in this case to satisfy the *Anderson v. Liberty Lobby* standard and beat summary judgment. There are age remarks, age statistics, job qualifications, pretext, legal precedents, etc. in support of this case. (See my Response to Summary Judgment Motion dated August 19, 2003 and my Opening Brief dated September 28, 2004. Section II, A-F (App., *Infra* 35-36)

Some people say that age discrimination happens in companies all the time. This may or may not be so, but they should not deny the fact that Congress in 1967 made it illegal for companies to discriminate on the basis of age or national

origin. Congress recognized the enormous difficulty that older people face in finding jobs, and enacted appropriate legislation.

It is agreed that all employers have the absolute right to make their own business and hiring decisions, right or wrong, but it is illegal to discriminate in employment on the basis of age or national origin.

REASONS FOR GRANTING THE PETITION

I. The Oral Argument arranged on March 4, 2005 was a circus and a sham.

A transcript of the oral argument appears below on pages 33 to 35.

I was allowed a total of five minutes, of which I reserved two minutes for rebuttal. During my statement, the Chief Judge interrupted me twice, asking me to speed up and close.

To begin, I explained briefly the background of the two parties; the history of the case in the district court; how summary judgment was granted to the respondents and how my Rule 59(e) motion to alter or amend judgment was denied by Judge Robert Swee..

I then explained that, when granting the motion for summary judgment, the District Judge ignored completed the statement of undisputed facts under Rule 56.1 and also that he did not apply the standards for summary judgment with any degree of rigor. Secondly, I stated that the respondents had ignored completely the Supreme Court's landmark decision in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S.133, 150 S.Ct. 2097 (2000), which is now the controlling decision on

age remarks, pretext and age discrimination in general, and relied instead on older cases, which have now been superseded. (See pages 31-33, *Infra.*)

I established the four elements of the *McDonnell-Douglas* standard in my prima facie age discrimination case and, at the behest of the Chief Judge, closed quickly by stating that my case for discrimination by national origin rested on five different reasons stated in my legal briefs.

The Chief Judge then asked the respondents' lawyer only one question on whether the district judge had properly applied the *McDonnell-Douglas* standard, which was answered in about 30 seconds. The attorney's response was the obvious one that everything had been done properly and correctly by the District Judge, with no specific details mentioned.

There were no other questions from any of the judges in the panel, and the respondents' lawyer did not respond at all to my two points about the Rule 56.1 statement of undisputed facts or the *Reeves v. Sanderson* standard.

There was obviously no rebuttal to make and the entire session was over in, may be, 7 or 8 minutes.

Reeves v. Sanderson Plumbing case is now the controlling decision in age discrimination cases, although *McDonnell-Douglas* did set the initial burden-shifting standard. The Chief Judge's sole question indicates that he is either not aware of this fact or prefers to ignore it. Secondly, it suggests that he, and probably the other judges also, had not read my opening brief dated September 28, 2004. Nearly one-half of that brief (Section II, subsections A-F, App., *infra*, 35-36) discusses the fact that the district court neither applied the *McDonnell-Douglas* standard to establish a prima facie case, nor did it use the standards set by the Supreme

Court in *Reeves v. Sanderson Plumbing* to assess age remarks or establish pretext.

Since no other question was asked at oral argument, nothing meaningful was achieved and it later became obvious that this oral argument had been arranged simply to create the impression that justice was being done, and that pro se plaintiffs have a level playing field at law with big corporations.

II. The Summary Order dated June 22, 2005 was drafted by respondents' lawyers.

The Summary Order was drafted by respondents' counsel because the nuances of the statements and arguments made therein could only be known to a law firm familiar with the case over six years. No law clerk or judge would write the same way within a few days' time. Consider, for example, the following reasons:

(1) This is primarily an age discrimination case, with national origin a secondary cause. Respondent's attorney's have always tried to present this case first as a national origin case, motivated, may be, by a personal animosity towards Asghar Alam. (This may also help the respondents in averting future age discrimination lawsuits.)

(2) The summary order, in the space of one paragraph, provides six conclusory reasons (in a shotgun approach) for denying my appeal. The language belongs to the respondents' lawyers' repertoire.

(3) No single, coherent reason was provided for denying my appeal -- exactly as no specific reason was ever stated by respondents for not hiring me.

(4) The District Judge in his Order dated June 5, 2003, had ruled that Mercer Consulting Group, Inc. should be included as a codefendant in this lawsuit. Respondents' lawyers have resented this inclusion, and tried to conceal its true identity by using MCGI in the Summary Order, whereas I have always used the full name in the captions to my briefs.

(5) It is puzzling to me that a Chief Judge, or his panel, would state four times in their relatively short summary order that they have treated me liberally because of my pro se status, especially when they have not done so at all. ("favorable to non-moving party", "liberally", "especially applicable" and "light most favorable"). If the panel had done its job conscientiously, would this be necessary more than once, or at all? Or, is this the defense counsel anticipating an appeal to the Supreme Court?

It is patently untrue that "evidence [was construed] in the light most favorable to the non-moving party [Pasha]." This again demonstrates that none of the judges read my opening brief to the appellate court. The title of Section I, sub-section C, ((App., *infra*, 34), states clearly that "although a motion for summary judgment requires that inferences be drawn in favor of the nonmovant Pasha, the district judge in this case failed to do so on several occasions, and all inferences favored the defendants, Mercer, Inc."

I have never asked for leniency and all I have requested from the courts is some explanation of their decisions and actions. Again, it should be obvious that the Chief Judge granted me no special consideration when he interrupted me, a pro se speaker, twice in three minutes, requiring me to speed up and close within the time limit.

Similarly, the appellate court's statement in the summary order that "we construe that litigant's appellate briefs and other pleadings liberally and read such submissions to raise